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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1942

No. 797

J. R. MASON,

Petitioner,

vs.

PALO VERDE IRRIGATION DISTRICT,

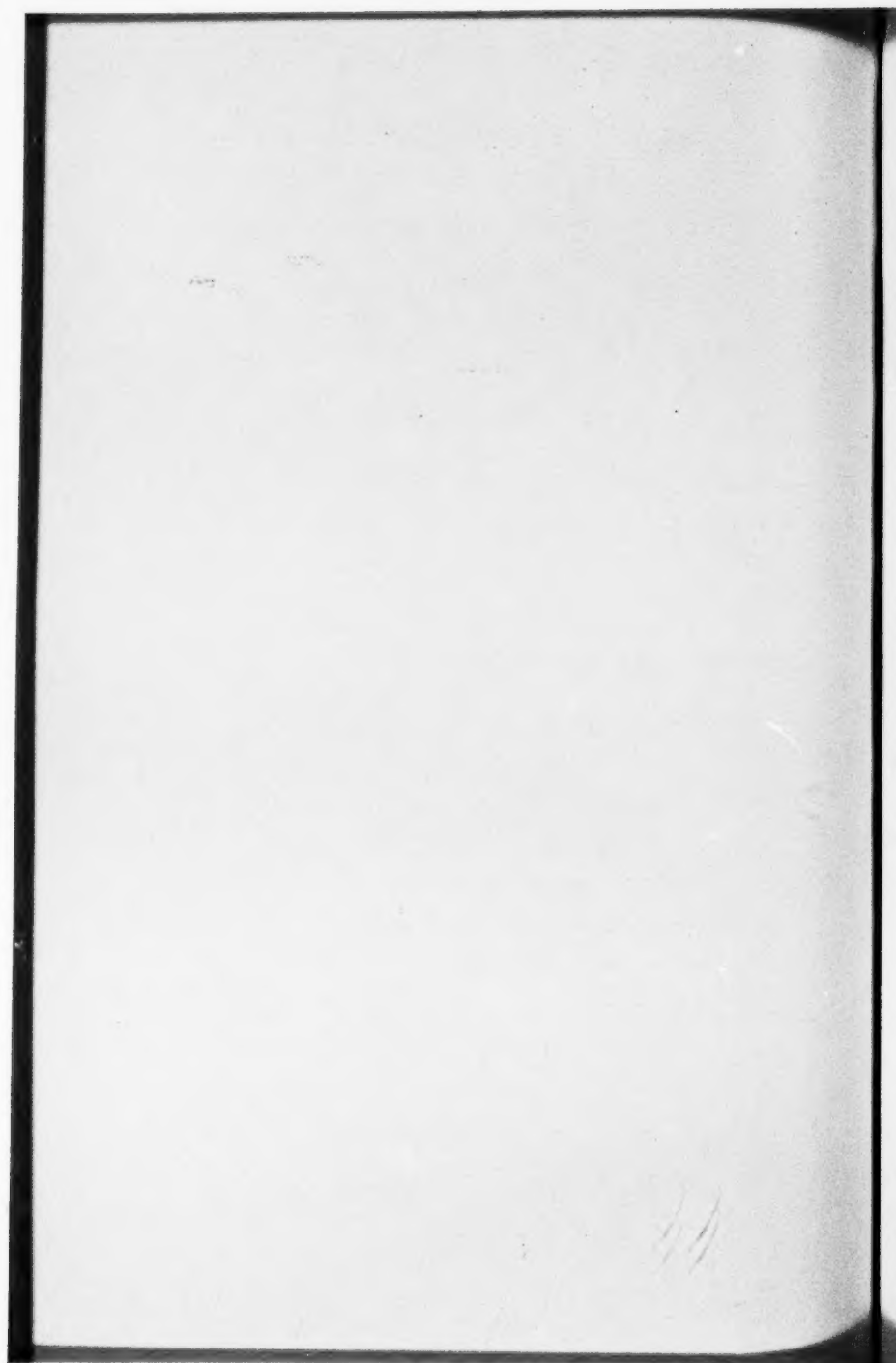
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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Respondent.

**PETITION FOR WRIT OF CERTIORARI
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for the Ninth Circuit.**

*To the Honorable Harlan F. Stone, Chief Justice of
the United States, and to the Associate Justices of
the Supreme Court of the United States:*

Petitioner J. R. Mason prays that a writ of certiorari issue to review the decision (R. Vol. I, p. 35) of the Circuit Court of Appeals for the Ninth Circuit made in the above entitled cause on January 6, 1943, which affirms the final decree of the District Court of

the Southern District of California, Northern Division, rendered against petitioner and others on April 27, 1942. (R. Vol. I, p. 8.)

OPINION BELOW.

Opinion of the Circuit Court of Appeals (R. Vol. I, p. 32), Fed. (2d)

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered January 6, 1943. (R. Vol. I, p. 36.) The mandate was stayed until disposition of the case by this Court. (R. Vol. I, p. 37.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code. (28 U. S. C. Sec. 347 (a).)

STATUTES INVOLVED.

Municipal Bankruptcy Act of May 24, 1934, c. 345 (48 Stat. 798), 11 U. S. C. 301-303, adding Sections 78-80 to the Bankruptcy Act of 1898; Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U. S. C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Sec. 3 (b), (52 Stat. 940). Principal California statutes involved are Cal. Stats. 1937, ch. 24; Cal. Stats. 1903, ch. 238; Cal. Stats. 1905, ch. 310; Cal. Stats. 1923, ch. 452.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding brought by the respondent, Palo Verde Irrigation District, a California irrigation district, organized under the provisions of a special act of the California Legislature, known as the "Palo Verde Irrigation District Act" (Cal. Stats. 1923, p. 1067), under what is now chapter IX of the Bankruptcy Act of 1898 as amended. (11 U. S. C., 401-404.) The trial Court rendered an interlocutory decree confirming the plan and its decision was affirmed by the Court below.

Jordan v. Palo Verde Irrigation District, 114 Fed. (2d) 691, writ of certiorari denied, 312 U. S. 693, 61 S. Ct. 712.

The Act (Title 11 U.S.C.A., Sec. 403 (f)) provides for the entry of a final decree when the bankrupt has made the composition consideration available.

"If an interlocutory decree confirming the plan is entered as provided in subdivision (e) of this section, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged

from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it."

The final decree was entered April 27, 1942 (R. Vol. I, p. 8), from which the present appeal was taken.

"Palo Verde Irrigation District (hereinafter for convenience referred to as the District) is an irrigation district organized under the provisions of a special act of the California Legislature known as the 'Palo Verde Irrigation District Act' (Cal. Stats. 1923, p. 1067). It was organized for the purpose of taking over the properties and in general the functions of the Palo Verde Drainage District and the Palo Verde Joint Levee District of Riverside and Imperial Counties, and acquiring the properties of the Palo Verde Mutual Water Company. By the terms of the Act under which the District was organized, it assumed the obligations of the bond issues of the corporations above mentioned.

There are \$850,000 of 6% bonds of the Palo Verde Drainage; \$170,000 of 6% bonds of the Mutual Water Company; \$1,216,330.36 of 6½% bonds of the Palo Verde Joint Levee District of Riverside and Imperial Counties; and \$1,938,000 of 6% bonds of the petitioner District involved in these proceedings.

¹The quotation following is from the opinion of Judge Stephens in the former appeal, *Jordan v. Palo Verde*, 114 Fed. (2d) 691.

The District, beginning May 1, 1930, defaulted in the payment of all bonds which it had issued and which it had assumed. In 1933 it applied to the Reconstruction Finance Corporation (herein referred to as R. F. C.) for fund with which to refinance. A plan was worked out whereby R. F. C. would advance sufficient funds to pay all bondholders 24.81 cents on the dollar of the principal amount of their bonds. Arrangements were made to carry out the plan, and the consenting bondholders (more than 92% of the entire) received the amount provided. On March 29, 1935, the District filed a petition for readjustment of its debts under the Municipal Bankruptcy Act as it was then in effect. (48 Stat. 498, 11 U. S. C. A. Sections 301-303.) Before the decision in these proceedings had been rendered, the United States Supreme Court handed down its decision in the case of Ashton v. Cameron County Water Improvement District No. 1, 298 U. S. 513, 56 S. Ct. 892, 80 L. Ed. 1309, holding the Act under which the proceedings were brought to be unconstitutional. Thereupon the District Court dismissed the proceedings, and we dismissed the District's appeal from the judgment of dismissal."

Statement of facts.

About 1877 Samuel Blythe acquired about 40,000 acres along the Colorado River, which is now part of the Palo Verde Irrigation District. He obtained the first water right upon the Colorado River. In 1908 a private mutual water company was organized. In 1916 it executed a deed of trust conveying its irrigation system in trust to secure a certain bonded in-

debtedness of which \$170,000 are involved in this proceeding.

The Palo Verde Drainage District is a public corporation organized under the provisions of California Statutes 1903, page 291, and it issued certain bonds amounting to \$850,000, which are involved in these proceedings.

The Palo Verde Joint Levee District of Riverside and Imperial Counties, California, a public corporation, was organized June 17, 1914 under the provisions of California Statutes 1905, page 327. The district constructed and maintained a protective levee system along the Colorado River with funds derived from two issues of bonds. Of the first issue \$911,951.86 principal and of the second issue \$304,378.50 principal are involved in these proceedings.

The Palo Verde Irrigation District, hereinafter referred to as the "district", was organized in 1923 for the purpose of taking over and augmenting the functions of the other two districts and the private company. It embraces over 95,000 acres of land, and is situated in the Counties of Riverside and Imperial, California.

Under Sections 12 and 13 of the Palo Verde Irrigation District Act, the district unconditionally assumed the bond issues of these three organizations. These sections declared that the drainage district and the levee district would cease to exist "except insofar as may be necessary to preserve the rights of bondholders and other creditors: * * * "The irriga-

tion district itself issued certain bonds. First issue of bonds in the amount of \$1,725,000 and the entire second issue amounting to \$213,000 are involved in these proceedings. The total principal bond debt involved is \$4,174,330.06.

J. R. Mason, petitioner, is the owner and holder of certain of the obligations of respondent (R. Vol. II, p. 76), namely 27 bonds (of \$1000 face amount each), of which 13 are of the issue of Palo Verde Irrigation District and 14 are of Palo Verde Joint Levee District of Riverside and Imperial Counties, California, and also is the owner and holder of \$12,480.00 in matured coupons (R. Vol. II, pp. 76-78) and of unmatured coupons as of July 15, 1938 (R. Vol. II, pp. 59, 79) and subsequent thereto.

The District obtained a "Final Decree" (R. Vol. I, p. 8) and from this final decree an appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit (R. Vol. I, p. 17), which Court affirmed, entering its opinion. (R. Vol. I, p. 32.) This decree materially departed from the provisions of the Act. (11 U. S. C. A., 403 (f).) It placed an abrupt time limit on the period of deposit of the bonds, it altered the terms of the plan of composition (R. Vol. I, p. 11), contained injunctions relating to other debtors than the bankrupt (R. Vol. I, p. 13) and its terms interfere with the political functions of the district.

OUR VIEW OF THE CASE.

This District was not organized under the California Irrigation District Act but was organized under a special act of the California Legislature, Stats. 1923, page 1067 (ch. 452).

It will be observed that under this act the new political subdivision, Palo Verde Irrigation District, assumed the contracts of the Mutual Water Company, the Drainage District and the Levee District. These two latter districts had been organized under California Statutes previously and were also public corporations. (Cal. Stat. 1905, ch. 310, Cal. Stat. 1903, ch. 238.)

The former entities and its officers were in no respect relieved, it is submitted, of their obligations and duties and it will be observed that under these statutes the county officers of the Counties of Riverside and Imperial also have certain mandatory duties. They are not officers of the respondent but public officers of the State of California upon whom are imposed certain continuous duties and obligations.

The effect of the final decree in this case is to obliterate any duty or obligation on the part of any of these other state agencies and their officers, and to restrain the petitioner from bringing any actions which he may have against them, either for damages or other relief. It is our view of the case that the discharge of the Palo Verde Irrigation District from its obligations does not *per se* annul the obligation of these other state agencies and officials, and that

the petitioner should be permitted to pursue whatever vested rights and remedies he may have against them. This is prohibited by the decree. (R. Vol. I p. 12.)

Next, these obligations do not become barred by the Statute of Limitations within any definite period of time, and it is our view of the case that the Court had no right to place a limitation of one year upon the right to claim the funds deposited pursuant to the plan of composition. In similar cases the Court has fixed longer periods of time. Some have placed no definite period of time, as for example, in the final decree in *Mason v. Merced Irrigation District*,U. S....., 63 S. Ct. 38. In the instant case, petitioner is running hard against the time limit, which is April 27, 1943. (R. Vol. I, p. 12.)

Furthermore, this very Circuit Court has been inconsistent in its own opinions. In the case of *Nolander v. Butte Valley Irrigation District*, No. 10,139, decided Dec. 31, 1942, it held:

"E. Appellant contends that the court erred in limiting to a year from the date of the final decree the period within which the bondholders may claim the amount decreed him. The decree does so confine the period. Instead it should have made the time a year from the date the decree is disposed of on appeal and on petition for certiorari, if any, or by failure to appeal or to seek certiorari."

In this case, decided six days later, it holds: "There is no merit to the contention".

Thirdly, it is vigorously contended that the District Court had no right to summarily or otherwise change the explicit terms of the interlocutory decree. An appeal was taken from the interlocutory decree and it became final. (*Jordan v. Palo Verde Irrigation District*, 114 Fed. (2d) 691.) Writ of certiorari was denied by this Court, 61 S. Ct. 712, 312 U. S. 693. Petitioner was a party to that appeal. That decree, interpreted in accordance with the clear meaning of the words used, would provide that this petitioner could obtain payment in full for a large number of his coupons. These payments would exceed the \$241 payable on principal. (R. Vol. II, pp. 121, 123.)

The District Court, after the appeal from the interlocutory decree, now in its final decree interprets and changes the "true meaning" of the interlocutory decree. This judicial interpretation and construction deprives the petitioner of rights which were vested in him under the interlocutory decree. If that interlocutory decree was wrong, the respondent should have appealed therefrom and obtained a correction. It is now too late, it is submitted, to vary the explicit terms of the interlocutory decree.

QUESTIONS PRESENTED.

I. We contend that only the obligation of the Palo Verde Irrigation District is affected by the bankruptcy proceeding, and only the Palo Verde Irrigation District can be discharged from such obligation as it may have on bonds, and this discharge cannot

release the Palo Verde Joint Levee District nor the Drainage District of any obligation that they may have had, nor does it release the county officers of liability for their failure to perform mandatory, continuing duties prescribed by law, and that the petitioner should be permitted to pursue the remedies he may have against any person, official or agency other than the Palo Verde Irrigation District arising out of the contract originally made and represented by the bonds. For example, he should be permitted to pursue any remedy he may have against the treasurer of the County of Riverside, the Supervisors of Riverside County, and even to require the county officials to levy and collect assessments upon personal property where such property levies were not considered in the composition plan.

II. The Palo Verde Irrigation District has no interest in the fund which was supplied to pay off the bondholders, and it is not entitled to enrichment by any determination or judgment cutting off the rights of the bondholders to the fund after a period of a year. Furthermore, where the same Circuit Court has decided this precise question differently, the matter should be resolved and a clear principle enunciated.

III. We contend that where an appeal has been taken from an interlocutory decree, to the Circuit Court of Appeals, and that furthermore a writ of certiorari has been denied, the terms of that decree become inflexible and cannot be changed by a final decree which purports merely to interpret the same, but in fact substantially changes its terms.

IV. It is submitted that in the peculiar instance of the Palo Verde Irrigation District it is the final decree which interferes with the sovereignty of the state and the exercise of the governmental and political powers confided to this district, notably the power unlimited ad-valorem of taxation, and that it is but a step from the decree here entered to absolute control and regulation by the Bankruptcy Court of all the governmental affairs of a public state agency.

REASONS FOR GRANTING THE WRIT.

I. We submit that the petitioner has a cause of action against the former levee district and its officers, and against the Treasurer of the County of Riverside and the Board of Supervisors of that County for damages for their failure to perform their duties in the days before the interlocutory decree in this case was entered, as well as other causes of action; that the bond in this case is a joint and several note and that the only discharge if any which it was proper for the Bankruptcy Court to grant was a discharge of the obligation of the respondent Irrigation District itself. Furthermore, the Levee District bonds provide for the annual levy of taxes upon both real and personal property and for the personal liability of certain property holders. This liability and the right of petitioner was in no way considered by the Bankruptcy Court. It in no way affects the land itself and it is submitted that the personal property here referred to was in no way subject to the jurisdiction of the Court

at any time and that the District Court should not have entered its final decree restraining the petitioner from pursuing these vicarious rights and remedies.

II. The decree fixes a period of one year for the surrender of the creditors' bonds. The bankrupt has no interest nor right to in the fund created by the composition plan. The lower Court has been somewhat inconsistent in determining even when the year should begin. We submit the period should be at least as long as the statute of limitations period.

III. The interlocutory decree in this case affirmed the plan of composition. This plan of composition read as follows (R. Vol. II, pp. 21, 22, 23, 24 and 120, 121, 122, 123):

"Palo Verde Irrigation District, being unable to meet its debts as they mature, desires to effect the following plan of composition:

Said debts consist principally of issued, outstanding and unpaid bonds issued or assumed by said District, to-wit, bonds issued by the following entities and in the amounts hereinafter set opposite the names of such entities, to-wit:

Principal Amount

Palo Verde Mutual Water Company	\$ 170,000.00
Palo Verde Joint Levee District of Riverside and Imperial Counties, California, first issue	911,951.86
Palo Verdi Joint Levee District of Riverside and Imperial Counties, California, second issue	304,378.50
Palo Verde Drainage District	850,000.00

Palo Verde Irrigation District, first issue	1,725,000.00
Palo Verde Irrigation District, second issue	213,000.00
Total	\$4,174,330.36

Together with certain unpaid coupons upon each of said bonds.

Said debts also include promissory note of said District payable to D. A. Foley & Co. in the principal amount of \$ 4,000.00

This District proposes and offers to deliver to each and all of the owners and holders of any of the above mentioned bonds cash, or at District's option, the bonds of this District of the 'Third Issue of Bonds (Refunding)' of principal amount equal to 24.81¢ per dollar of the principal amount of the bonds of the above mentioned company and districts owned and held by the above mentioned owners and holders. Each of said bonds shall be accompanied by all of its appurtenant coupons which have not heretofore been paid. (101) In the event any such unpaid coupons due prior to May 31, 1933, are missing, the principal amount of cash, or at District's option, refunding bonds to be delivered by the District shall be reduced in the amount of 20.50¢ for each dollar of the face amount of such missing coupons. In the event any such unpaid coupons due May 31, 1933 or subsequently are missing, the face amount of such coupons will be deducted from the face amount of such cash, or at District's option, refunding bonds to be delivered by the District.

The District also proposes and offers to deliver to the owner and holder of said \$4,000.00 note cash, or at District's option, bonds of said District of said 'Third Issue of Bonds (Refunding)' of principal amount equal to 25¢ per dollar of the principal amount of said note. The issuance of said 'Third Issue of Bonds (Refunding)' was authorized by vote of the electors of said District at an election held on the 4th day of June, 1934, and by a resolution for the issuance and execution of such bonds adopted by said Board of Trustees at a meeting of said Board held on the 24th day of July, 1934, as amended, to which resolution reference is hereby made; said refunding bonds shall bear interest at the rate of four per cent (4%) per annum, payable semi-annually on January first and July first, shall be dated July 1, 1934, shall be payable in such funds as are on the respective dates of payment of the principal of and interest on said bonds made legal tender for debts due the United States of America, shall be payable at the office of the County Treasurer of Riverside County, in the County of Riverside, California, or at the National City Bank of New York in the Borough of Manhattan, City of New York, State of New York, at the option of the holder and shall be in thirty (30) series to mature annually from and including July 1, 1938, to and including July 1, 1967; said bonds and the coupons thereon shall be in substantially the form set out in the resolution last mentioned and may be registerable at the option of the holder as to both principal and (102) interest; said District will provide that the schedule of maturities of said bonds set out in said last men-

tioned resolution shall be modified so as to provide bonds in such principal amounts as may be necessary to satisfy and comply with such final decree as may be made by the United States District Court in proceedings for the composition of indebtedness of said District under Chapter X of the National Bankruptcy Act.

The District shall also deliver to each and all of the owners and holders of any interest coupons detached from the above-mentioned bonds, cash, or at District's option, the bonds of said District of the 'Third Issue of Bonds (Refunding)' of principal amount (a) equal to 20.50 cents for each dollar of face amount of any such detached coupons which came due prior to May 31, 1933, and (b) equal to the face amount of any such detached coupons due May 31, 1933, or subsequently."

Attention is called to use of the words "excluding all interest due" (Interlocutory Decree, R. Vol. II, pp. 134, 138) indicating that the payment of \$241 was to be in discharge of bond principal only. Regardless of what certain officials of the district may have intended in drafting its plan of composition, the plan of composition is explicitly clear. It is not ambiguous nor uncertain. It says that in addition to the payment of principal, the district "Shall also deliver to each and all of the owners and holders of any interest coupons detached from the above-mentioned bonds, cash, or at District's option, the bonds of said District of the 'Third Issue of Bonds (Refunding)' of principal amount (a) equal to 20.50 cents for each dollar of face amount of any such

detached coupons which came due prior to May 31, 1933, and (b) equal to the face amount of any such detached coupons due May 31, 1933, or subsequently". (R. Vol. II, p. 123.)

It recites that the creditors, in addition shall also be paid the full amount of specified coupons. True, these coupons may in the case of long maturity bonds amount to much more than the \$248 figure offered for the principal of each \$1000 bond.

The final decree completely destroys this provision of the interlocutory decree. The decision affirming this change of substance we submit should be reversed.

IV. The functions of this district are exclusively governmental. The final decree in this case for the first time imposed upon the district an absolute restraint restraining it forever from levying taxes in excess of those stipulated in the judgment. This is the effect of the decree. It is but a step from such decree to a decree which would require the district to levy assessments not required under state law, thus placing the district and its taxpayers under the control of the Court.

Prior to the final decree, no jurisdiction of any kind was invoked upon the district. The final decree, in so far as it serves to exonerate both the county, and the other districts discharged, in addition to respondent, from their mandatory duty to levy and collect taxes as prescribed by the laws of the State, and to render all the bonds wholly worthless unless surrendered by April 27, 1943, is tantamount to a decree ordering the

district to levy taxes in violation of State law, and subjecting the districts and the Counties of Riverside and Imperial and the holders of taxable real property to the control of the Federal Courts. We submit that this is an "interference" with the governmental and political affairs of the State and its governmental agencies, prohibited by sub-section (c) 403, 11 U. S. C. A.

Wherefore, petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and to send to this Court for its review and determination a full and complete transcript of the record and of the proceedings of said Court in the case numbered and entitled in its dockets as "No. 10209, J. R. Mason, Appellant, v. Palo Verde Irrigation District, Appellee", and that the decree of said Court be reversed by this Court with directions to dismiss the proceeding and for such other relief as to this Court may seem proper.

Dated, Turlock, California,
March 3, 1943.

J. R. MASON,
Petitioner.

W. COBURN COOK,
Attorney for Petitioner.